Rex v. *Sadla & Ors.* [3] in which this situation was discussed.

The question that we have to consider is whether in this particular case any such consideration arose and whether, if it did, the matter was sufficiently put to the jury by the learned trial Judge. The matter is dealt with at pages 323 and 324 of the summing-up. The relevant passage reads as follows:—

"Foreman of Jury: May I request guidance on one point of law which has been raised ?

His Lordship: Indeed, Mr. Foreman.

Foreman of Jury: Counsel for accused No. 4 has indicated that it is for the Jury to decide that his client is not a member of the unlawful assembly who caused death to the deceased. According to a similar case heard in India, they must find that Accused No. 4 is not guilty at the time the blow was delivered.

His Lordship: Perhaps I can explain that that would arise only on his own evidence. If you have a reasonable doubt about the matter (let me put it that way) as to whether he was out of action before this fight had really started, then, of course, he would not be a member of the unlawful assembly at the time when the deceased was killed.

Foreman of Jury: This places the burden of proof on the defence, isn't it ?

His Lordship: No, no, no, on the contrary if you have a reasonable doubt in the matter. The Prosecution must always satisfy you. I am sorry but I thought I made it clear that you have got to be satisfied that first of all the four accused were members of this unlawful assembly, and that they were, in fact, actively taking part in this fight. If the Prosecution leave you in any doubt at all — for instance as regards the fourth accused as to whether he was actually taking part in this fight which ensued — if you are left in any doubt about the matter, he is entitled to the benefit of that doubt and you must acquit him. There is no onus on the accused or any of them to do anything as you heard me advising them when they have to make their defence that they can remain in the dock and keep silent. The Prosecution have got to prove every ingredient of the charge up to the hilt. If there is any doubt about the matter, then the accused must have it."

It is to be noted that the learned Judge pointed out to the jury that if they had a reasonable doubt as to whether the second appellant was "out of action before this fight had really started" then he would not be a member of the unlawful assembly at the time when the deceased was killed.

Again he says that if the prosecution left them in any doubt at all "for instance as regards the fourth accused as to whether he was taking part in this fight which ensued" the accused was entitled to the benefit of that doubt.

At page 308 of the summing-up the learned Judge pointed out to the jury that "This incident, which we have been told about, must quite clearly have occurred very suddenly, have taken a very short space of time, and have subsided almost as quickly as it had begun".

Having regard to that version of the picture, which we regard as a fair version, it seems to us that the point at issue as to whether or not the second appellant at the relevant time still shared the common object was sufficiently and clearly put to the jury.

The jury by their verdict answered that question adversely to the second appellant and in our opinion nothing has been established before us to invalidate their decision.

No question of alibi arises in the case of this appellant, as he was admittedly found, with injuries, in the vicinity of the struggle.

In his case, too, therefore, his appeal fails and his conviction must be confirmed.

Appeal dismissed.

Solicitors: *Marshall & Smith; de Souza & Christopher.*

Re LEE YEW SENG

[O. Cr. J. (Rose C.J.) November 27, 1959]

[Singapore — Habeas Corpus No. 2 of 1959]

Constitutional law — Habeas corpus — Detention under Criminal Law (Temporary Provisions) Ordinance, 1955 — ss.41, 48 and 52 — Constitution of Advisory Committees — Criminal Law (Advisory Committee) Rules, 1958, r.3 — Whether ultra vires and in conflict with natural justice.

Interpretation — "Every order . . . shall . . . be referred by" — Meaning of "refer".

This was an application under section 375 of Criminal Procedure Code (Cap. 132) for a writ of *habeas corpus*. The Court granted an order *nisi* directing the Minister of Home Affairs and the Commissioner of Police, Singapore to show cause why the applicant should not be set at liberty. In their affidavits they stated that the applicant was detained under the Criminal Law (Temporary Provisions) Ordinance, 1955.

It was contended for the applicant (1) that the 2 Advisory Committees were not properly appointed in that there was no official notice of their appointment in the Government Gazette; (2) that there was no provision in the Ordinance for the appointment of a Secretary; (3) that Rule 3 of the Criminal Law (Advisory Committee) Rules, 1958 dealing with the constitution of the Advisory Committee was *ultra vires* the Ordinance — Rule 3 of the Ordinance provides that every Advisory Committee should consist of a Chairman, an alternate Chairman and a panel of members. The applicant contended that once an Advisory Committee has been appointed, the whole body must meet for the purpose of deciding any matter referred to them under section 48(4) and that there was no sufficient reference to the Advisory Committee within the meaning of section 48.

Held: (1) there is no statutory provision for public notification of these Advisory Committees. Para. 4 of the Minister's affidavit has set out the name of the Chairman of each committee and the name of the Secretary, and para. 5 mentions that the members of the Advisory Committees are averse to having their identities known. In view of this, there was no reason to question the validity of the appointments of both committees;

(2) although the only mention of a Secretary in the relevant legislation is in the Schedule attached to the Criminal Law (Advisory Committee) Rules 1958, such an appointment far from being in conflict with the Ordinance, is in fact necessary for the efficient working of the Committees;

(3) had Rule 3(3) provided that the Advisory Committee could be composed of a Chairman, or any member of the committee, sitting alone, that would have been contrary to the spirit and manifest intention of the Ordinance and therefore *ultra vires*, for section 51 specifically provides that each of the Advisory Committees must consist of not less than 2 persons. The fact that there were more than 2 persons of whom 3

would constitute the body for the hearing of the matter is not unreasonable or contrary to justice. Rule 3 is therefore not *ultra vires*;

(4) the term 'refer' is not a term of art. It means no more than that the Advisory Committee should have their attention drawn by the Minister to the matter in question. A reference by the Minister to the Secretary of an Advisory Committee is a sufficient compliance with the requirements of the Ordinance, for the secretary is a recognised channel prescribed by normal administrative machinery.

HABEAS CORPUS.

L. Rayner (*Mary Lim* with him) for the applicant.

A. V. Winslow (Solicitor-General) for the respondent.

Rose C.J.: This is a return to an Order Nisi directed to the Minister of Home Affairs Singapore and to the Commissioner of Police Singapore to show cause why the applicant should not be set at liberty.

Section 51 of the Criminal Law (Temporary Provisions) Ordinance, 1955 provides that: "For purposes of this Ordinance the Minister may from time to time appoint one or more Advisory Committees each consisting of not less than two persons."

Section 52 sets out the powers and procedure of the Advisory Committees.

The Minister, as stated in his affidavit, appointed two such Advisory Committees, each consisting of six persons (a Chairman, an alternate Chairman and four members). He also appointed Mr. Chin, an official in the Ministry of Home Affairs, Joint Secretary for both Advisory Committees.

The first point taken on behalf of the applicant is that these two Advisory Committees were not properly appointed in that there was no official notice of their appointment in the Government Gazette.

There is no statutory provision for public notification of these Advisory Committees and having regard to paragraph 4 of the Minister's affidavit dated the 12th of November 1959 I see no reason to question the validity of the appointments of both Committees. The Minister gives the name of the Chairman of each Committee (Mr. T. W. Ong and Mr. C. F. J. Ess) and the name of the Secretary.

He states in paragraph 5 of his affidavit that the members of the Advisory Committee are averse to having their identities made known and that in his opinion it would be contrary to the public interest to disclose the identities of the two members of the Committee to hear the applicant's case.

In the absence of any evidence to the contrary, I accept that the appointments of all the members of each Advisory Committee were validly made.

As regards the Secretary, it is suggested by learned counsel for the applicant that there is no provision in the Ordinance and it was not in the contemplation of the Legislature that there should be a Secretary at all.

It is true that the only mention of a Secretary in the relevant legislation is in the Schedule attached to the Criminal Law (Advisory Committee) Rules, 1958. It seems to me, however, that so far from being in conflict with the Ordinance to appoint a Secretary, such an appointment is in fact necessary for the efficient working of the Committees. Moreover, although I am informed from the Bar that there has been no public notification of Mr. Chin's appointment as Secretary of the two Committees, I accept the statements in the affidavit of the Minister and of Mr. Chin himself that he has been duly appointed

A more important point taken by the applicant, and one which has caused me some difficulty, is that Rule 3 of the Criminal Law (Advisory Committee) Rules, 1958 dealing with the constitution of the Advisory Committees, is ultra vires the Ordinance.

Rule 3 reads as follows:—

"3. — (1) Every Advisory Committee appointed under section 51 of the Ordinance shall consist of a Chairman, an alternate Chairman and a panel of members.

(2) An alternate Chairman shall have all the powers conferred by these Rules on the Chairman.

(3) For the purpose of carrying out its functions under section 48 of the Ordinance in respect of any order made by the Minister, the Advisory Committee shall normally be composed of the Chairman and two members selected by him but the proceedings of the Advisory Committee shall not be invalidated by the absence of one of the two members.

Section 48 of the Ordinance as amended reads:—

"48. — (1) Every order made by the Minister under section 47 of this Ordinance shall, together with a written statement of the grounds upon which the Minister made the order, be referred by the Minister to an Advisory Committee constituted as provided in section 51 of this Ordinance, within twenty-eight days of the making of such order. The Committee shall submit to the Yang di-Pertuan Negara a written report on the making of such order and may make therein such recommendations as it shall think fit.

(2) The Yang di-Pertuan Negara shall consider such report and may cancel or confirm such order and in confirming such order may make thereto such variations as he shall think fit."

The applicant's contention is that once an Advisory Committee has been appointed, however many persons (not less than two) have been appointed to it, the whole Advisory Committee must meet for the purpose of deciding any matter referred to them under section 48.

No doubt, as the learned Solicitor-General concedes, a convenient way — indeed the most convenient way — of dealing with the constitution of a Committee of this type would be to prescribe its constitution for the hearing of any particular matter in the Ordinance itself.

I have been referred to the Industrial Courts Ordinance (Chapter 151) in which this method has been used. Section 3 reads:—

3. — (1) For the purpose of the settlement of trade disputes in manner provided by this Ordinance, there shall be a standing Industrial Court, consisting of persons to be appointed by the Minister of whom some shall be independent persons, some shall be persons representing employers, and some shall be persons representing workmen.

(2) The Minister shall notify by notification in the Gazette the appointment of any person under subsection (1) and shall in such notification declare the term for which such appointment is made.

(3) For the purpose of dealing with any matter which may be referred to it, the Court shall be constituted of such of the members of the Court as the president may direct.

(4) The president of the Court, and the chairman of any division of the Court, shall be such person, being one of the independent persons aforesaid, as the Minister may by order, given either generally or specially, by notification in the Gazette direct.

This is an unexceptionable manner of dealing with the matter but the point that I have to consider is whether the alternate method adopted under the Criminal Law (Temporary Provisions) Ordinance is also permissible.

The rule making power under the Ordinance is section 59, the relevant part of which reads:—

"Rules. 59. — (1) The Minister may make rules for the purpose of carrying into effect all or any of the provisions of this Part of this Ordinance."

Had rule 3(3) provided that the Advisory Committee could be composed of the Chairman, or indeed any member of the Committee, sitting alone, that would in my opinion have been contrary to the spirit and manifest intention of the Ordinance and therefore *ultra vires*, in that section 51 specifically provides that each of the Advisory Committees must consist of not less than two persons.

There is, in my opinion, nothing contrary to natural justice in the Minister deciding that there should be more than one Advisory Committee and that the membership of each of those Advisory Committees should consist of a number of persons, or to use the words adopted in the Rules "a panel" of members. It is to be remembered that the members of these Committees are unpaid and are persons with professions or businesses to attend to. That being so, it seems to me that there is nothing unreasonable or contrary to natural justice in the Minister deciding that each individual member of the panel should not be called upon for every sitting of the Committee. He has chosen to appoint two Committees of six persons of whom three shall normally constitute the body for the hearing of any particular matter of whom, in case of necessity, two may form a quorum, provided that one of those two is the Chairman. These arrangements in themselves are not unreasonable and, in my opinion, cause no injustice to any member of the public who is detained under the provisions of the Ordinance.

I have come to the conclusion that Rule 3 does not conflict with natural justice; nor is it in conflict with the spirit or manifest intention of the Ordinance. That being so, and having regard to the generality of the language of the rule making section, I am not disposed to hold that Rule 3 is *ultra vires*.

The point now arises as to whether there was any (or sufficient) reference to the Advisory Committee within the meaning of section 48 of the Ordinance.

It is clear from the papers that the case of the applicant was referred within the statutory time to the Secretary, Mr. Chin. Mr. Chin stated in evidence before me that he had received standing instructions from the two Chairmen of the Committees to retain all case documents in his office where they could be seen upon request by any member of the Committees. He also stated both in his affidavit and in evidence that he forwarded on the 8th September, 1959 to the Chairman and alternate Chairman of each Advisory Committee an intimation that the papers in a number of cases including the applicant's had been received and were available. I have no reason to assume that these intimations were not received by these four persons, all of whom were residents of Singapore, before midnight on September the 11th, which it is common ground was the 28th day from the making of the Order in the applicant's case.

Mr. Chin stated in evidence that, in practice, members of the Committee did not as a rule study the papers in any particular case until the day on which it was to be determined; which day, of course, would in all probability be after the statutory 28 days. Be that as it may, the question to be determined is whether there has been an adequate reference to the Committee within the meaning of section 48.

The term "refer" in the section is not, in my opinion, a term of art. It means no more, in my view, than that the Advisory Committee should have their attention drawn by the Minister to the matter in question. This meaning accords with paragraph 6 of the definition of the word "refer" contained in the Shorter Oxford English Dictionary.

I have come to the conclusion that a reference by the Minister to the Secretary of an Advisory Committee is a sufficient compliance with the requirements of the section; and it is immaterial that the Secretary in question is the Secretary of more than one Advisory Committee.

I am of the opinion that a reference to a Committee or Tribunal of the type under consideration may properly be made through a recognised channel prescribed by normal administrative machinery; and that the Secretary is such a recognised channel.

In the light of the opinion that I have formed on this matter, the fact that the applicant's case (as a result of an application for an adjournment of the proceedings made, quite properly, by the applicant's own counsel on personal grounds) was transferred from Mr. Ess's list fixed for Septem-

ber the 30th to Mr. Ong's list fixed for a later date has no bearing on the present proceedings.

In the result therefore I have come to the conclusion that the procedure followed by the Minister, in general, by the Rules that he has made under section 59 of the Ordinance is not contrary to natural justice and is not *ultra vires*. Moreover I do not consider that the applicant, in particular, has suffered any substantial injustice by reason of the procedures that have been followed.

For the reasons that I have given the Rule Nisi must be discharged. There will be no order as to costs.

Rule nisi discharged.

Solicitors: *L. Rayner.*

FRANCIS & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Hill and Good JJ. A.) December 7, 1959]

[K. L. — F.M. Criminal Appeal No. 33 of 1959]

Criminal Law and Procedure — Constructive liability — Common intention and common object — Penal Code, ss.34 and 149 — Whether accused can be convicted of an offence by reason of s.34, although charged under s.149 — Criminal Procedure Code (Cap. 6), ss.166 and 167.

The four appellants and five other persons were tried together on a charge of unlawful assembly with the common object of causing hurt to certain others, and knowing that the murder of the deceased was likely to be committed, thereby committing an offence punishable by virtue of section 149 of the Penal Code. The learned trial Judge told the jury that an unlawful assembly must consist of five or more persons, and then proceeded to deal with the difficulty that would arise if they considered that the deceased was murdered or killed in circumstances amounting to culpable homicide not amounting to murder, but were not satisfied that at least five of the accused were involved. On that point he directed their attention to section 34 of the Penal Code and told them that by reason of that section if they were satisfied that the deceased was killed by one or more of the accused in furtherance of a common intention to kill him, then any of the accused who did any act in connection with the killing and who shared in the common intention was guilty of murder or culpable homicide not amounting to murder as the case might be. The five persons who were tried with the appellants were discharged. In the case of the four appellants, the jury found that they killed but did not murder the deceased. The learned trial Judge then ruled that the appellants were guilty under sections 304 and 149 of the Penal Code and entered judgment accordingly.

On appeal, it was argued for the appellants that their convictions under sections 149 and 304 of the Penal Code were bad in law because there was a finding of fact by the jury that only four persons were involved in the attack on the deceased and that as a matter of law four persons cannot constitute an unlawful assembly as defined by section 141 of the Penal Code.

Held: having regard to the provisions of sections 166 and 167 of the Criminal Procedure Code, the appellants in the present case could as a matter of law have been convicted for culpable homicide not amounting to murder by reason of section 34 of the Penal Code, although the charge against them alleged their guilt by reason of section 149, if it was proved that they acted together in causing the death of the deceased and each of them shared in a common intention to cause his death. As the learned trial Judge had fully explained to the jury that being four in number the appellants could not constitute an unlawful assembly but that they could be convicted of culpable homicide by reason of section 34 if there was sufficient evidence of a common intention to kill the deceased, the jury must be taken to have the provisions of that section in mind when they convicted the appellants of culpable homicide not amounting to murder.

Appeal dismissed. Judgment of High Court varied.

Cases referred to:—

(1) *Crofter Hand Woven Harris Tweed Co. Ltd.* v. *Veitch*, [1942] A.C. 435.

(2) *Barendra Kumar Ghosh* v. *King-Emperor*, 52 I.A. 40, 52.

(3) *Begu* v. *King-Emperor*, 52 I.A. 191, 195.

(4) *Sheo Ram* v. *Emperor*, A.I.R. 1948 All. 162.

(5) *Karnail Singh & Anor.* v. *State of Punjab*, A.I.R. 1954 S.C. 204, 207.

(6) *Lachhman Singh & Ors.* v. *The State*, A.I.R. 1952 S.C. 167.

CRIMINAL APPEAL.

D. R. Seenivasagam for the 1st and 2nd appellants.

K. Y. Khong for the 3rd and 4th appellants.

B. T. H. Lee (Federal Counsel) for the respondent.

Thomson C.J.: This appeal has been urged upon us on purely technical grounds and in consequence the facts of the case need only be dealt with briefly.

It is common ground that on 14th February, 1959, at the premises of one Kuda Baksh at Gunong Rapat New Village near Ipoh there was some sort of a fight in the course of which Mohamed Ali, the son of Kuda Baksh, was stabbed to death. At the same time his mother and one of his brothers received injuries which did not prove fatal. It was the case for the prosecution that the present four appellants and five other persons who were in the event tried with them, that is nine persons in all, in pursuance of some antecedent family squabble assembled together with the common object of causing hurt to Kuda Baksh and his wife and the deceased, that they proceeded to carry that common object into effect and that while doing so Mohamed Ali was killed by one or more of them (there were at least three lethal wounds on his body) in circumstances which constituted the killing murder.

On these premises the nine persons alleged to be concerned were charged with and tried upon the following charge:—

"That you, on or about the 14th day of February, 1959, at Gunong Rapat New Village, in the State of Perak, were members of an unlawful assembly with the common object to cause hurt to Mohamed Ali s/o Kuda Baksh, Kuda Baksh, Ghulam Nabi and Sultano Bee or any one or more of them and that one or more of you murdered the said Mohamed Ali s/o Kuda Baksh and that you all knew the murder of Mohamed Ali was likely to be committed, and that you thereby committed an offence punishable by virtue of section 149 of the Penal Code under section 302 of that Code."